

## **REMARKS/ARGUMENTS**

### **Specification**

In the specification, paragraphs on pages 6-9 have been amended to correct minor editorial problems and to bring the specification into agreement with amended figure 4.

### **Drawings**

One replacement sheet and one annotated sheet showing changes are being submitted herewith to correct minor deficiencies and to facilitate a better understanding of the invention. Since the changes are supported by the originally filed application, it is submitted that the replacement sheet does not contain any new matter.

### **Status of the Claims**

Claims 1-13 have been cancelled.

Claims 14-24 remain in this application.

### **Claim rejection under 35 U.S.C. § 103(a)**

Claims 14, and 17-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. No. 5,245,717 (Rudy) in view of U.S. Patent No. 777,825 (Wilkes). Applicant respectfully disagrees. Rudy discloses a relaxation article for covering the arms and shoulders of a user to prevent "uncomfortable coolness overtaking the person" in an indoor environment, such as a bedroom. The relaxation article, as shown in Figures 1 and 2, features a flat flexible member 110 having a plurality of openings 111 and a plurality of sleeves 120, which receive the arms of a user. Rudy also features a pocket 130 that is "available for the insertion of a book, pen, knitting supplies, etc."

Rudy does not show or disclose that his relaxation article is convertible between a blanket and a pillow, as recited in currently amended independent claims 14 and 20. Instead, Rudy only discloses a relaxation article.

Rudy does not show or disclose an elongated middle portion having a width that is wholly divisible into the width of his relaxation article, nor does he show or disclose an elongated middle portion that extends the length of his relaxation article along a longitudinal centerline, as recited in currently amended independent claims 14 and 20. These features are simply not shown and identified in the figures.

Rudy's pocket has a bottom edge; however the bottom edge is not substantially coincident with the bottom edge of his relaxation article. Rather, the bottom edge of Rudy's pocket is located a considerable distance from the bottom edge of his relaxation article, so that the pocket may be easily accessed by a user's hands.

The bottom edge of Rudy's pocket is not substantially coincident with the middle portion of the blanket. Instead, the bottom edge of Rudy's pocket is independent of the middle portion of the blanket and "... may be present at any convenient location such as on the flat flexible member, on a sleeve, etc." (emphasis added).

Rudy's pocket is not designed to receive at least one lower appendage of a user, nor is Rudy's pocket designed to receive a substantial portion of his relaxation article so that his relaxation article may be converted into a pillow.

Note that Rudy does not show or disclose sleeves that extend away from each other when the article is arranged in a generally planar configuration. Instead, Rudy's sleeves are parallel to each other when the relaxation article is arranged in a generally planar configuration.

Rudy does not show or disclose that his apertures are located along a horizontal centerline that is generally perpendicular to a longitudinal centerline. This feature is not shown and identified in the figures.

The reference of Wilkes adds little. Wilkes shows and discloses a lap robe comprising a front piece A and a back piece B, which are secured about their edges. The front piece A includes "...two oppositely-arranged openings "a", located in the upper part of the robe and at such a distance apart that either one or both hands of a user may be conveniently thrust through the openings when the robe is wrapped about the user." For further protection, Wilkes provides an interlining a' between the front and back pieces, with the interlining forming a downwardly projecting pocket a" for receiving and retaining any articles which may be introduced therein. Note the use of "wind-shields" "c", which prevent wind from blowing up the sleeves when the hand is introduced through opening a. Wilkes also provides his robe with a foot piece D that extends across the back of the robe at its lower end, with the foot piece secured along its lower and two side edges. Wilkes discloses in lines 8-10 of column 1, a lap robe of the type "used to protect the lower part of the person when riding in carriages, sleighs, or other conveyances." (emphasis added).

Wilkes does not show or disclose that his lap robe is convertible between a blanket and a pillow, as recited in currently amended independent claims 14 and 20. Instead, Wilkes merely discloses a lap robe.

Wilkes does not show or disclose an elongated middle portion having a width that is wholly divisible into the width of his lap robe, nor does he show or disclose an elongated middle portion that extends the length of his lap robe along a longitudinal centerline, as recited in currently amended independent claims 14 and 20. Rather, Wilkes only shows a cut line 2 that is used to identify the location of a cross-sectional view (figure 2) of his

lap robe. An elongated middle portion having a width that is wholly divisible into the width of the lap robe, and a longitudinal centerline are features that are not shown and identified in the figures.

The bottom edge of Wilkes foot piece is not substantially coincident with the middle portion of his lap robe. Instead, the bottom edge of Wilkes' foot piece extends substantially along the width of his lap robe. Note that the dashed lines that depict the foot piece D would suggest that there are two pockets.

Wilkes' apertures "a" are not configured to allow an upper appendage to protrude substantially through his lap robe. Instead, a user's hands are contained between the front and back pieces of the lap robe. Wilkes does not show or disclose that his apertures "a" are located along a horizontal centerline that is generally perpendicular to a longitudinal centerline. A horizontal centerline is not shown and identified in the figures. Moreover, Wilkes does not show or disclose sleeves.

It is well settled that "[c]ombining prior art references without evidence of ... a suggestion, teaching, or motivation simply takes the inventor's disclosures as a blueprint for piecing together the prior art to defeat patentability -- the essence of hindsight"<sup>1</sup>.

It would not be obvious to one having ordinary skill in the art at the time of the invention to employ a foot piece as taught by Wilkes with the relaxation article of Rudy. Rudy is not concerned with the feet of his user. Rudy is only concerned with the arms and shoulders of his user. More specifically, Rudy is concerned with people who are indoors, laying in bed or sitting on an easy chair, and whose arms and shoulders become cold due to inactivity.

---

<sup>1</sup> In re. Dembiczak, 175F3d. 994, 50 USPQ2d. 1614

Wilkes, on the other hand, is concerned about the legs and feet of a user. More specifically, Wilkes is only concerned with people who are outdoors, riding in an open conveyance and subject to inclement weather, such as snow, rain, and high winds. Wilkes provides his lap robe with a foot pocket as a way of avoiding the necessity "for the user to take the usual care in arranging the robe about the feet" due to the inclement weather. Wilkes is so concerned with inclement weather that he provides chains E and hooks E' that hold the lap robe snugly about the legs and feet of the user. Thus, Wilkes teaches that his lap robe is attached to the legs and feet of a user.

In contrast, Rudy provides his relaxation article with a "glow in the dark border 133 that helps identify the article and helps keep users from stubbing their toes on furniture covered with it, e.g., bed, couch, love seat, etc., when one walks about the room in the dark. "

If one were to provide the relaxation article of Rudy with the pocket, chain, and hook of Wilkes, a user would not be able to walk about a room. Moreover, the user would not be able to avoid stubbing their toes because furniture would not be covered by the relaxation article. There is no teaching, suggestion, or motivation to combine the references of Rudy and Wilkes other than the Examiner's broad conclusory statement that it would have been obvious to one of ordinary skill in the art at the time of the invention in order to "protect the feet and ankles and prevent the robe from being displaced or disarranged at its lower end by the user arranging the blanket about the feet." In other words, such a modification would destroy the reference of Rudy.

Assuming arguendo, that such a modification were possible, neither of the references alone or in combination shows, teaches, or suggest converting the relaxation article into a pillow.

Dependent claims 17-19, and 21 include further limitations to independent claims 14

and 20. It is respectfully submitted that claims 14, and 17-22 are not obvious in view of Rudy and Wilkes, and Applicant respectfully requests that rejection of the claims under 35 USC. 103(a) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

**Claim rejection under 35 U.S.C. § 103(a)**

Claim 23 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. No. 5,245,717 (Rudy) in view of U.S. Patent No. 777,825 (Wilkes) and U.S. Pat. No. 6,219,847 (Aikins), with the Examiner taking the position that:

Claim 23, Rudy discloses all of the Applicant's claimed limitations except for at least one of the second ends of the pair of sleeves comprising an expandable cuff. Aikins discloses a blanket with an expandable cuff 17 on the ends of a pair of sleeves. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ an expandable cuff as taught by Aikins with the blanket of Rudy in order to cover most of the body without falling off.

(emphasis added).

Applicant respectfully disagrees. As explained above, Rudy does not show all of the claimed limitations in either of the currently amended independent claims 14 or 20.

As to the reference of Aikins, Aikins does not show or disclose a blanket. Rather, Aikins shows and discloses a cocoon garment that is designed and configured to be worn by a user, and which comprises a tubular body that has a neck opening and a pair of sleeves. Aikins has narrowed cuffs 17, but nowhere does she state that they are expandable. To make such an assertion is without merit. In view of the fact that the cuffs 17 of Aikins are not any different from the cuffs 122 of Rudy, the coverage of a user's body could be changed. There is no motivation to combine the references of Rudy and Aikins.

It is respectfully submitted that claim 23 is not obvious in view of Rudy, Wilkes, and Aikins, and Applicant respectfully requests that rejection of the claim under 35 USC. 103(a) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

#### **Claim rejection under 35 U.S.C. § 103(a)**

Claims 15, 16, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. No. 5,245,717 (Rudy) in view of U.S. Patent No. 777,825 (Wilkes) and U.S. Pat. No. 6,006,356 (Song), with the Examiner taking the position that:

Claims 15-16, Rudy discloses all of the Applicant's claimed limitations except for the apertures having an oblong shape and an elongated axis that is parallel to the longitudinal centerline of the blanket. Song discloses a rectangular garment having apertures (15,20) with an oblong shape and an elongated axis that is parallel to the longitudinal centerline of the blanket. It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the oblong shape as taught by Song in order to receive the wearer's arms there-through.

Claim 24, Rudy, as modified, discloses the apertures having an oblique orientation relative to the horizontal centerline of the blanket (fig. 1)(Wikes) [sic]. Rudy fails to disclose the apertures having an oblong shape. Song discloses a rectangular garment having apertures (15,20) with an oblong. [sic] It would have been obvious to one having ordinary skill in the art at the time of the invention to employ the oblong shape as taught by Song in order to receive the wearer's arms there-through.

(emphasis added).

Applicant respectfully disagrees. As explained above, Rudy does not show all of the claimed limitations in either of the currently amended independent claims 14 or 20.

The reference of Song adds little. Song shows and discloses a wraparound garment that is configured to be wound about the torso of a user. There is a plurality of apertures 15, 20, and 25 in the garment of Song that are configured to receive a user's arms. The apertures have elongated axes, however, the axes of Song's apertures are not parallel to the longitudinal centerline of Song's garment. This is because the longitudinal centerline of Song extends from edge 30 to edge 35 along the longest dimension of the garment. If anything, Song's elongated axes are perpendicular to the longitudinal centerline of his garment. Moreover, there is no motivation to provide the reference of Rudy with the apertures of Song. Rudy already has apertures or openings that are "... desirably large, say, about double the size of sleeve openings as present on shirts or blouses so that there is ample room should the user fall asleep; thus, circulation or nerve impulses might not be readily impeded." (emphasis added). There is not motivation to provide oblong apertures other than the Examiner's conclusory assertion that it would have been obvious. The only thing obvious is that the openings of Rudy's relaxation article already achieve their intended use. There is no need for any modification of Rudy's openings whatsoever.

It is respectfully submitted that claims 15, 16, and 24 are not obvious in view of Rudy, Wilkes, and Song, and Applicant respectfully requests that rejection of the claim under 35 USC. 103(a) be withdrawn and passed to issue or, in the alternative, reconsidered and further examined.

## **CONCLUSION**

On the basis of the foregoing amendments, remarks, and arguments of record, applicant respectfully submits that claims 14-24 are in condition for allowance. Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Alternatively, if the Examiner is of the opinion that prosecution of the application may be expedited by a telephonic interview, the Examiner is invited to contact applicant's representative at the telephone number listed below.



Respectfully submitted,  
For the Applicant  
By their Attorneys,

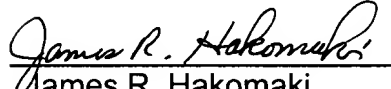
Customer Number:

**22854**

MOORE, HANSEN & SUMNER  
2900 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402  
Telephone: (612) 332-8200  
Facsimile: (612) 332-1780

Date December 2, 2004

By:

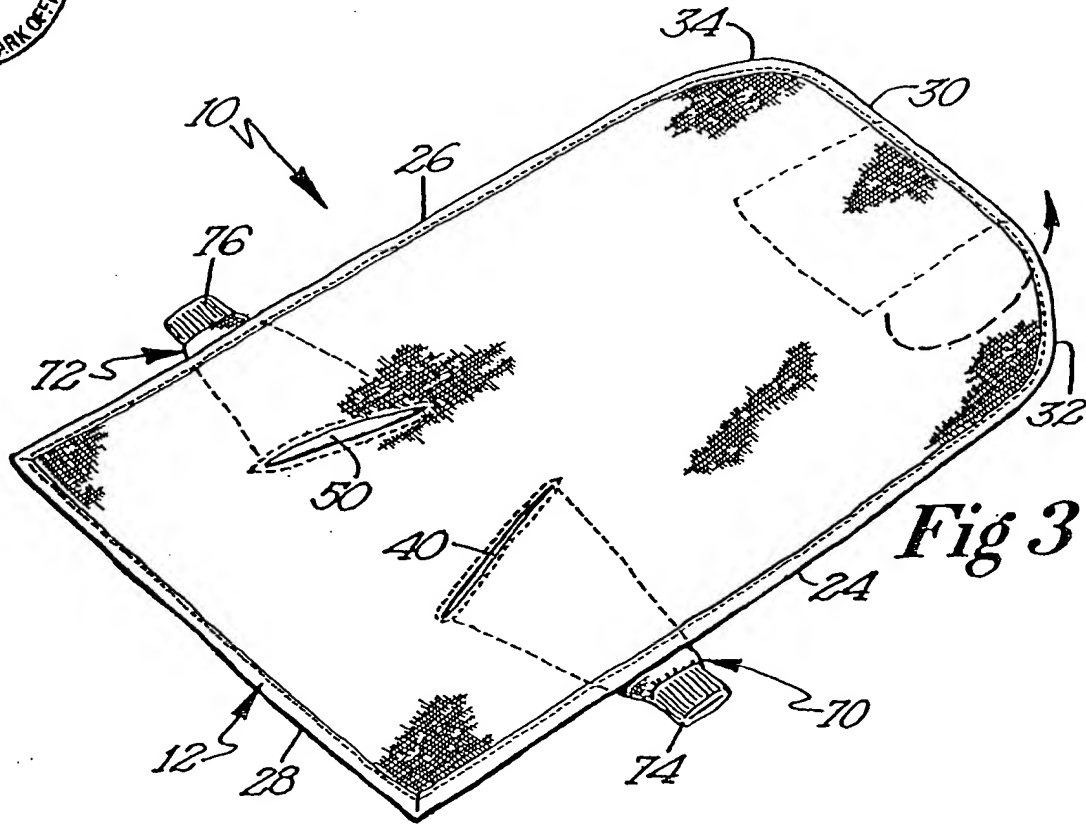
  
James R. Hakomaki  
Reg. No. 35,037

### **Amendments to the Drawings:**

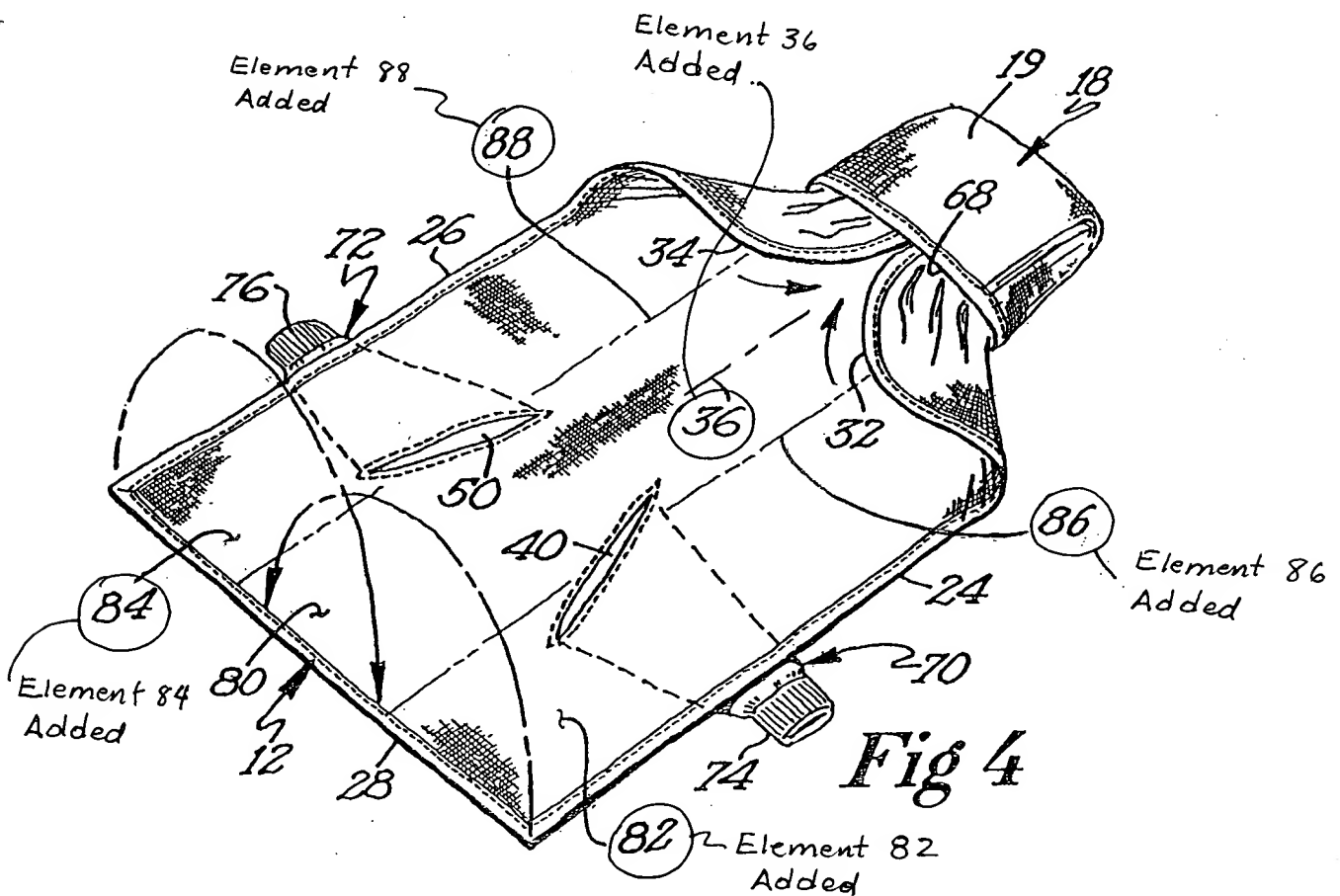
The attached sheet of drawings includes changes to Figure 4. The sheet, which includes Figures 3 and 4, replaces the original sheet including Figures 3 and 4. In Figure 4, elements 36, 82, 84, 86, and 88 have been added.

Attachment: Replacement Sheet

Annotated Sheet Showing Changes



**Fig 3**



**Fig 4**